STATE OF MICHIGAN

COURT OF APPEALS

WELLS FARGO BANK NA TRUSTEE, Plaintiff-Appellee,	UNPUBLISHED April 24, 2012
v	No. 300729 Kalamazoo Circuit Court
ELIZABETH R. CRAIG and MARK J. CRAIG, Defendants-Appellants.	LC No. 2010-000238-AV

Before: METER, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Defendants appeal by leave granted the circuit court's October 6, 2010, order affirming the district court's denial of defendants' motion for summary disposition and grant of judgment of possession in favor of plaintiff. Because MERS was the mortgagee under the security instrument, and thus had standing to foreclose by advertisement under MCL 600.3204(1)(d), we affirm.

Defendants obtained a mortgage on their house from Fremont Investment & Loan. The mortgage agreement provided that Mortgage Electronic Registration Systems, Inc. ("MERS") was the nominee for the lender and mortgagee under the security instrument. Defendants defaulted and MERS foreclosed on defendants' property by advertisement under MCL 600.3201, *et seq*., purchased the property at the subsequent foreclosure sale, and then quitclaimed the property to plaintiff. After defendants' redemption period had expired, plaintiff brought an eviction action. Defendants moved for summary disposition under MCR 2.116(C)(8), arguing that the underlying foreclosure was void because MERS lacked standing to foreclose by advertisement under MCL 600.3204(1)(d). The district court denied defendants' motion for summary disposition and entered a judgment of possession in favor of plaintiff. Defendants then appealed to the circuit court. On October 6, 2010, the circuit court entered an order affirming the district court's ruling. We subsequently granted defendants' application for leave to appeal.

On appeal, defendants argue, in relevant part, that MERS was not "the owner . . . of an interest in the indebtedness" under MCL 600.3204(1)(d) and, thus, was not authorized to foreclose by advertisement. Accordingly, defendants argue that the circuit court erred by affirming the district court's denial of their motion for summary disposition. We disagree.

We review de novo decisions made on motions for summary disposition, *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006), as well as "the circuit court's affirmance of

the district court's denial of defendant's motion for summary disposition[.]" *First of America Bank v Thompson*, 217 Mich App 581, 583; 552 NW2d 516 (1996). "A motion for summary disposition brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the allegations of the pleadings alone." *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006).

Defendants rely in large part on *Residential Funding Co, LLC v Saurman (Saurman I)*, 292 Mich App 321; 807 NW2d 412 (2011) to support their position. In that case, a panel of this Court held that MERS, merely as a mortgagee, did not own an interest in the indebtedness secured by the mortgage and thus lacked authority to foreclose by advertisement under MCL 600.3204. However, in *Residential Funding Co, LLC v Saurman (Saurman II)*, 490 Mich 909; 805 NW2d 1 (2011), the Supreme Court reversed *Saurman I* and held:

> [A]s record-holder of the mortgage, MERS owned a security lien on the properties, the continued existence of which was contingent upon the satisfaction of the indebtedness. This interest in the indebtedness—i.e., the ownership of legal title to a security lien whose existence is wholly contingent on the satisfaction of the indebtedness—authorized MERS to foreclose by advertisement under MCL 600.3204(1)(d).
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> [T]he Legislature's use of the phrase "interest in the indebtedness" to denote a category of parties entitled to foreclose by advertisement indicates the intent to include mortgagees of record among the parties entitled to foreclose by advertisement, along with parties who "own[ ] the indebtedness" and parties who act as "the servicing agent of the mortgage." [*Saurman II*, 490 Mich 909, quoting MCL 600.3204(1)(d).]

The facts and issues in the present case are substantially similar to those in *Saurman I*. Thus, we conclude that MERS, as mortgagee, was "the owner . . . of an interest in the indebtedness" as required by MCL 600.3204(1)(d) and, thus, was authorized to foreclose by advertisement. *Saurman II*, 490 Mich 909. Accordingly, the circuit court did not err by affirming the district court's denial of defendants' motion for summary disposition and grant of possession of judgment in favor of plaintiff.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens